

## Message Text

LIMITED OFFICIAL USE

PAGE 01 KUWAIT 04177 010905Z

22

ACTION DOTE-00

INFO OCT-01 NEA-10 ISO-00 EB-07 AID-05 OPIC-03 L-03 /029 W

----- 064971

P R 010808Z SEP 76

FM AMEMBASSY KUWAIT

TO SECSTATE WASHDC PRIORITY 6125

INFO USDOC WASHDC

DEPT OF TREASURY WASHDC

AMEMBASSY JIDDA

AMEMBASSY TEHRAN

LIMITED OFFICIAL USE KUWAIT 4177

DEPT. PASS TO DEPT. OF TRANSPORTATION FOR MENDENHALL FHWA  
AND OPIC FOR BAZARIAN

COMMERCE FOR CAGNE/HEARN

TREASURY FOR OSAA

E.O. 11652: N/A

TAGS: BEXP, EFIN, EAID, FHWA, KU

SUBJECT: SURETY PERFORMANCE BONDS ON CONSTRUCTION CONTRACTS

REF: (A) STATE 162714, (B) KUWAIT 2970, (C) KUWAIT 3338,  
(D) KUWAIT 4126, (E) KUWAIT 3710

SUMMARY: PROVIDED THAT INFORMATION IS SUPPLIED QUICKLY  
ON U.S. STATE LEGAL REQUIREMENTS REGARDING SURETY BOND  
USAGE BY HIGHWAY ORGANIZATIONS IN THE U.S. (REF D),  
THERE IS A GOOD CHANCE THAT KUWAIT'S MINISTRY  
OF PUBLIC WORKS (KMPW) WILL CHANGE ITS REQUIREMENTS FROM  
BANK GUARANTEES TO SURETY BONDS FOR PERFORMANCE GUARANTEES  
ON A NUMBER OF UPCOMING KUWAIT MOTORWAY CONSTRUCTION  
CONTRACTS. KMPW DECISION ON USE SURETY BONDS IN THESE  
CONTRACTS IS IMMINENT. CABLE PROVIDES CONTRACT PROVISION  
CURRENTLY UNDER CONSIDERATION BY KMPW AS WELL AS TEXT  
PROPOSED PERFORMANCE BOND DOCUMENT. MPW ACTION COULD SET  
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 KUWAIT 04177 010905Z

USEFUL PRECEDENT FOR FUTURE. END SUMMARY.

1. A DECISION BY KUWAIT'S MINISTRY OF PUBLIC WORKS ON A PROPOSAL TO REQUIRE SURETY BONDS FOR PERFORMANCE GUARANTEES ON KUWAIT MOTORWAY CONSTRUCTION CONTRACTS IS IMMINENT. THE PROPOSAL WAS DEVELOPED BY THE FEDERAL HIGHWAY ADMINISTRATION ADVISORY GROUP WORKING WITH

THE MINISTRY ON THE OVERALL DEVELOPMENT OF THE MINISTRY'S HIGHWAY ORGANIZATION AND PROGRAM. IMPROVED PROTECTION OF THE MINISTRY'S INTERESTS WAS THE BASIS FOR THE FHWA PROPOSAL, BUT CONTRACTOR PROBLEMS WITH BANK GUARANTEES WAS ALSO A CONSIDERATION.

2. THE FHWA PROPOSAL AS INITIALLY PRESENTED ALLOWED SURETY BONDS AS ALTERNATIVES TO BANK GUARANTEES, BUT THE PROPOSAL CURRENTLY UNDER CONSIDERATION WILL REQUIRE SURETY BONDS FOR PERFORMANCE GUARANTEES. BANK GUARANTEES WILL CONTINUE TO BE REQUIRED FOR INITIAL BONDS (BID BONDS) IN ACCORDANCE WITH A SPECIFIC PROVISION OF KUWAIT'S TENDERS LAW.

3. AT THIS TIME, PROSPECTS APPEAR SOMEWHAT OPTIMISTIC THAT THE SURETY BOND PROPOSAL WILL BE ACCEPTED. THE MINISTRY HAS REQUESTED THAT FHWA PROVIDE MORE DETAILS CONCERNING THE LEGAL ASPECTS OF SURETY BOND USAGE BY HIGHWAY ORGANIZATIONS. THIS INFORMATION HAS BEEN REQUESTED (REF D) AND SHOULD BE AVAILABLE WITHIN A WEEK. THE MINISTRY'S DECISION IS EXPECTED SHORTLY AFTER THE LEGAL DETAILS ARE RECEIVED.

4. THE TEXT OF THE CONTRACT PROVISION CURRENTLY UNDER CONSIDERATION BY THE MINISTRY FOLLOWS:

PART II - CONDITIONS OF PARTICULAR APPLICATION

10 PERFORMANCE BOND

THE PROVISIONS OF CLAUSE 10 PERFORMANCE BOND OF PART I -

GENERAL CONDITIONS ARE DELETED AND THE FOLLOWING SUBSTITUTED:

UPON NOTIFICATION TO THE CONTRACTOR OF THE EMPLOYER'S INTENT TO AWARD THE CONTRACT FOR COMPLETION OF THE WORKS, THE CONTRACTOR SHALL SUBMIT A BOND GUARANTEEING FAITHFUL PERFORMANCE OF THE CONTRACT IN ACCORDANCE WITH THE CONTRACT DOCUMENTS. THE PERFORMANCE BOND SHALL BE RETAINED BY THE EMPLOYER DURING THE PERIOD OF EXECUTION OF THE WORKS AND WILL BE RETURNED TO THE CONTRACTOR AFTER ISSUANCE OF LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 KUWAIT 04177 010905Z

THE CERTIFICATE OF COMPLETION OF THE WORKS.

10 (1) BOND REQUIREMENTS

THE CONTRACTOR SHALL SUBMIT WITHIN TWENTY (20) DAYS OF NOTIFICATION OF THE EMPLOYER'S INTENT TO AWARD THE CONTRACT AND PRIOR TO EXECUTION OF THE CONTRACT A PERFORMANCE GUARANTEE IN THE FORM OF A SURETY BOND IN AN AMOUNT EQUAL TO FIFTY PERCENT (50 PERCENT) OF THE FULL CONTRACT AMOUNT CONDITIONED UPON FAITHFUL PERFORMANCE OF THE CONTRACT IN ACCORDANCE WITH THE CONTRACT DOCUMENTS. SUCH

BONDS SHALL BE SOLELY FOR THE PROTECTION OF THE EMPLOYER'S INTERESTS.

THE PERFORMANCE BOND SHALL BE IN THE FORM STATED IN DOCUMENT I - 8A AND SHALL BE VALID FOR A PERIOD TO COVER THE ACTUAL PERIOD OF EXECUTION OF THE WORKS UNTIL SUCH TIME AS THE CERTIFICATE OF COMPLETION OF THE WORKS IS ISSUED BY THE EMPLOYER.

THE PERFORMANCE BOND SHALL BE EXECUTED BY A SURETY COMPANY OR COMPANIES ACCEPTABLE TO THE EMPLOYER. SUCH SURETY COMPANY OR COMPANIES SHALL BE REPRESENTED IN KUWAIT BY A KUWAITI INSURANCE COMPANY OR A KUWAITI BANK ACCEPTABLE TO THE EMPLOYER. THE EMPLOYER WILL CONSIDER PROPOSALS FOR LOCAL REPRESENTATION BY OTHER THAN KUWAITI INSURANCE COMPANIES AND KUWAITI BANKS ONLY UNDER UNUSUAL CIRCUMSTANCES AND WHEN FULLY EXPLAINED AND JUSTIFIED. ANY KUWAITI INSURANCE COMPANY ACTING AS REPRESENTATIVE FOR THE SURETY COMPANY OR COMPANIES SHALL BE AFFORDED THE OPPORTUNITY TO PARTICIPATE IN THE UNDERWRITING OF THE SURETY BOND. ANY CLAIM BY THE EMPLOYER AGAINST THE PERFORMANCE BOND SHALL BE DIRECTED TO THE LOCAL REPRESENTATIVE OF THE SURETY COMPANY.

ALL DISPUTES OR DIFFERENCES RELATING TO ANY CLAIMS BY THE EMPLOYER AGAINST THE PERFORMANCE BOND THAT CANNOT BE RESOLVED BY NEGOTIATIONS SHALL BE FINALLY SETTLED BY ARBITRATION UNDER THE RULES OF CONCILIATION AND ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE BY ONE OR MORE ARBITRATORS APPOINTED IN ACCORDANCE WITH THE SAID RULES. ANY ACTIONS UNDER THIS PROVISION WILL BE ARBITRATED IN KUWAIT.

ALL EXPENSES RELATING TO THE FURNISHING AND MAINTAINING OF THIS PERFORMANCE GUARANTEE SHALL BE THE SOLE RESPONSIBILITY OF THE CONTRACTOR.

5. THE TEXT OF THE PROPOSED PERFORMANCE BOND DOCUMENT FOLLOWS:

DOCUMENT I - 8A: MODEL OF FINAL BOND

(GENERAL CONDITIONS - PART II CLAUSE 10)

TO: THE MINISTRY OF PUBLIC WORKS KUWAIT.

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 04 KUWAIT 04177 010905Z

DEAR SIR:

WE HAVE THE HONOUR TO INFORM YOU THAT WE ( ) (HEREINAFTER CALLED THE CONTRACTOR) AND ( ) (HEREINAFTER CALLED THE SURETY) ARE HELD AND FIRMLY BOUND TO THE GOVERNMENT OF KUWAIT, MINISTRY OF PUBLIC WORKS (HEREINAFTER CALLED THE EMPLOYER) IN THE AMOUNT OF KUWAITI DINARS ( ) (KD ) FOR THE PAYMENT OF WHICH WE BIND OURSELVES, OUR HEIRS, EXECUTORS, ADMINISTRATORS AND SUCCESSORS JOINTLY AND SEVERALLY BY THESE PRESENTS.

WHEREAS, THE CONTRACTOR HAS ENTERED INTO A WRITTEN CONTRACT WITH THE EMPLOYER DATED ( ) TO CONSTRUCT AND COMPLETE WORKS DESCRIBED AS ( ) WHICH CONTRACT IS HEREBY REFERRED TO AND MADE A PART HEREOF AS FULLY AND TO THE SAME EXTENT AS IF COPIED AT LENGTH HEREIN.

THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT THE CONTRACTOR SHALL FAITHFULLY PERFORM AND FULFILL ALL THE UNDERTAKINGS, COVENANTS, TERMS, CONDITIONS AND AGREEMENTS OF SAID CONTRACT

DURING THE ORIGINAL TERM OF SAID CONTRACT AND ANY EXTENSIONS THEREOF, WITH OR WITHOUT NOTICE TO THE SURETY, AND DURING THE LIFE OF ANY GUARANTEE REQUIRED UNDER THE CONTRACT, AND SHALL ALSO PERFORM AND FULFILL ALL THE UNDERTAKINGS, COVENANTS, TERMS, CONDITIONS AND AGREEMENTS OF ANY AND ALL DULY AUTHORIZED MODIFICATIONS OF SAID CONTRACT THAT MAY HEREAFTER BE MADE, NOTICE OF WHICH MODIFICATIONS TO THE SURETY BEING HEREBY WAIVED. THIS OBLIGATION SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL ALL CONDITIONS OF THIS OBLIGATION HAVE BEEN MET AT WHICH TIME THE OBLIGATION SHALL BE VOID. IN WITNESS WHEREOF, THE CONTRACTOR AND SURETY HAVE EXECUTED THIS PERFORMANCE BOND AND HAVE AFFIXED THEIR SEALS ON THIS ( ) DAY OF ( ) 1976.  
(SIGNATURES OF CONTRACTOR AND SURETY COMPANY REPRESENTATIVES).

6. INFORMATION REGARDING THE MINISTRY'S DECISION AND ANY RELATED COMMENTS WILL BE TRANSMITTED AS SOON AS DETAILS ARE AVAILABLE.

7. COMMENT: EMBASSY HAS BEEN FOLLOWING DEVELOPMENTS ON MPW'S WILLINGNESS TO ACCEPT SURETY BONDS FOR PERFORMANCE GUARANTEES WITH CLOSE INTEREST. IF MPW ACTUALLY TAKES SUCH DECISION, WE BELIEVE IT WOULD CREATE A PRECEDENT AND REPRESENT A BREAKTHROUGH WHICH COULD BE EXPLOITED FOR CONTRACTS OTHER THAN THOSE INVOLVING CONSTRUCTION. THIS ACTION WOULD CERTAINLY PROVIDE EXCELLENT BASIS FOR EMBASSY EFFORTS TO PURSUE THIS MATTER ALONG LINES DESCRIBED  
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 05 KUWAIT 04177 010905Z

IN REFS C AND E.  
MAESTRONE

LIMITED OFFICIAL USE

NNN

## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** CONSTRUCTION, INVESTMENT GUARANTEES, BONDS (SECURITIES), CONTRACTS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 01 SEP 1976  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** SmithRJ  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1976KUWAIT04177  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
**Film Number:** D760331-0709  
**From:** KUWAIT  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1976/newtext/t197609102/aaaadjua.tel  
**Line Count:** 203  
**Locator:** TEXT ON-LINE, ON MICROFILM  
**Office:** ACTION DOTE  
**Original Classification:** LIMITED OFFICIAL USE  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 4  
**Previous Channel Indicators:** n/a  
**Previous Classification:** LIMITED OFFICIAL USE  
**Previous Handling Restrictions:** n/a  
**Reference:** 76 STATE 162714, 76 KUWAIT 2970, 76 KUWAIT 3338, 76 KUWAIT 4126, 76 KUWAIT 3710  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** SmithRJ  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 10 JUN 2004  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <10 JUN 2004 by greeneet>; APPROVED <14 OCT 2004 by SmithRJ>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
04 MAY 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** SURETY PERFORMANCE BONDS ON CONSTRUCTION CONTRACTS  
**TAGS:** BEXP, EFIN, EAID, KU  
**To:** STATE  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006